

1 LANCE A. ETCHEVERRY (State Bar No. 199916)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
3 300 South Grand Avenue, Suite 3400
4 Los Angeles, California 90071
5 Telephone: (213) 687-5000
6 Facsimile: (213) 687-5600

7 Attorneys for Plaintiff Assicurazioni Generali S.p.A.

8 FRANK KAPLAN (State Bar No. 50859)
9 ALSCHULER, GROSSMAN, STEIN & KAHAN LLP
10 1620 26th Street, Third Floor, North Tower
11 Santa Monica, California 90404
12 Telephone: (310) 907-1000
13 Facsimile: (310) 907-2000

14 Attorneys for Defendant John Garamendi, in his capacity as
15 Commissioner of Insurance of the State of California

16 **UNITED STATES DISTRICT COURT**
17 **EASTERN DISTRICT OF CALIFORNIA**

18 ASSICURAZIONI GENERALI S.p.A.,

19 Plaintiff,

20 v.

21 JOHN GARAMENDI, in his capacity as the
22 INSURANCE COMMISSIONER OF THE
23 STATE OF CALIFORNIA,

24 Defendant.

) Case No. CIV S-00-0875 WBS JFM

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) **STIPULATION AND ORDER**

) **GRANTING ASSICURAZIONI**

) **GENERALI S.P.A.'S MOTION FOR**

) **ATTORNEYS' FEES AND COSTS AND**

) **MODIFYING JUDGMENT**

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) [Fed. R. Civ. Proc. 54 and 58]

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) Presiding: The Hon. William B. Shubb

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RECITALS

1. The Plaintiff in the above-captioned action (the “Action”) is Assicurazioni Generali S.p.A. (“Generali”) and the Defendant is John Garamendi, in his capacity as Commissioner of Insurance of the State of California (the “Commissioner”). (Generali and the Commissioner are collectively the “Parties.”)

2. This matter is before this Court on remand from the Ninth Circuit to determine the amount of attorneys’ fees and costs to be awarded to Generali under 42 U.S.C. § 1988 as the prevailing party. *See Gerling Global Life Ins. Co. of America, et al. v. Garamendi*, 400 F.3d 803, *as amended*, 410 F.3d 531 (9th Cir. 2005).

3. Generali’s moving papers in support of its fee motion were filed on May 22, 2006. The Commissioner filed an opposition on August 22, 2006. Pursuant to stipulation of the parties and order of the Court, the Honorable Daniel Weinstein (Ret.) was appointed as a Special Master to report to the Court on certain issues relating to the fee motion in the Action, as well as in two related actions in which the plaintiffs were held entitled to recover attorneys’ fees and costs, *Gerling Global Life Ins. Co. of America, et al. v. Garamendi*, E.D. Cal. Case No. CIV. S-00-CV-0506 WBS JFM (the “Gerling Action”), and *American Insurance Association, et al. v. Garamendi*, E.D. Cal. Case No. Civ. S-00-613 WBS JFM (the “AIA Action”).

4. In an effort to avoid the cost and delay associated with protracted litigation over the amount of fees and costs to be awarded to the plaintiffs, the Parties, as well as the parties to the Gerling Action and the AIA Action, agreed to mediate their respective fee motions before Judge Weinstein on October 7-8, 2006. Following the mediation, Judge Weinstein issued a mediator’s proposal, in which he proposed that Generali be awarded six hundred fifty thousand dollars (\$650,000) in fees and costs in settlement of their dispute respecting Generali’s fee motion.¹

¹ Generali, as a member of the American Insurance Association, also incurred a portion of the fees and costs at issue in the fee motion in the AIA Action. Such fees and costs were not included within the \$650,000, and as set forth in the Settlement Agreement and Mutual Release concurrently executed by the Parties (the “Settlement Agreement”), Generali has reserved, and not waived, its rights and ability to share in any fees and costs recovered by the plaintiffs in the AIA Action. Likewise, the Commissioner has agreed that it will not use the Settlement Agreement or this Stipulation and Order as a defense to or set-off against the American Insurance Association’s claims for fees and costs.

5. Both Generali and the Commissioner have accepted the mediator's proposal, have entered into the Settlement Agreement, which adopts the proposal and other material terms, and are entering into this Stipulation to effectuate this agreed resolution.

6. It is the Parties' intent in entering into this Stipulation that the Order and the modified Judgment resulting therefrom be enforceable against and binding on the Commissioner just as any other post-judgment order awarding attorneys' fees and costs pursuant to Rules 54 and 58 of the Federal Rules of Civil Procedure.

7. Each signatory hereto represents and warrants that he or she has the right, power, legal capacity and authority to bind the party on whose behalf he or she signs and that no further act of board, entity, body or other person is necessary.

STIPULATION

NOW, THEREFORE, through their duly authorized representatives, the Parties stipulate as follows:

1. Generali and the Commissioner stipulate that the Court shall (1) enter an order to GRANT Generali's Motion for Attorneys' Fees and Costs and award Generali six hundred fifty thousand dollars (\$650,000) in attorneys' fees and costs in the Action; and (2) modify the Judgment previously entered by the Court to reflect this award.

2. Timely satisfaction of the modified Judgment (hereafter, the “Judgment”) in accordance with the Settlement Agreement shall fully satisfy and release all claims for attorneys’ fees, costs, and interest by Generali in the Action including, but not limited to, any claim for fees, costs, or post-judgment interest incurred between the date of entry of this Stipulation and Order and satisfaction of the Judgment (but as noted above, shall not impact in any way Generali’s entitlement to share in any fees and costs recovered by the plaintiffs in the AIA Action).

3. Should this Stipulation and Order or any material portion thereof later be adjudged unenforceable, then the Parties agree that the matter shall be returned to the District Court for such further proceedings as may be appropriate to carry out the mandate of the Ninth Circuit in *Gerling Global Life Ins. Co. of America et al. v. Garamendi*, 400 F.3d 803, *as amended*, 410 F.3d 531 (9th Cir. 2005).

1 Dated: January __, 2007

JOHN GARAMENDI, in his capacity as the Commissioner
of Insurance of the State of California

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4 By: /s/ Gary Cohen

Gary Cohen
Deputy Commissioner and
General Counsel, California
Department of Insurance

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7 Dated: January __, 2007

ASSICURAZIONI GENERALI S.p.A.

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10 By: /s/ John Martini

John Martini
Chief Executive Officer
Generali US Branch

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13 Dated: January __, 2007

ALSCHULER, GROSSMAN, STEIN & KAHAN LLP

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16 By: /s/ Frank Kaplan

Frank Kaplan
Attorneys for Defendant John Garamendi, in his capacity as
Commissioner of Insurance of the State of California

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19 Dated: January __, 2007

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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22 By: /s/ Lance A. Etcheverry

Lance A. Etcheverry
Attorneys for Plaintiff Assicurazioni Generali S.p.A.

ORDER AND MODIFIED JUDGMENT

Pursuant to Rules 54 and 58(a)(2) of the Federal Rules of Civil Procedure, 42 U.S.C. § 1988, and the opinion of the United States Court of Appeals for the Ninth Circuit in *Gerling Global Life Ins. Co. of America, et al. v. Garamendi*, 400 F.3d 803, *as amended*, 410 F.3d 531 (9th Cir. 2005); based upon the Stipulation of the parties; and good cause appearing, the Court hereby GRANTS Generali's Motion for Attorneys' Fees and Costs, filed on or about May 22, 2006, and awards it six hundred fifty thousand dollars (\$650,000) in attorneys' fees and costs. The Court's prior judgment, entered on October 22, 2001, and as amended on appeal, is hereby modified to reflect this award. Nothing in this Order and Modified Judgment shall be deemed in any way to affect or alter Generali's entitlement to share in any attorneys' fees or costs recovered by the plaintiffs in the related action captioned *American Insurance Association and American Re-Insurance Company v. John Garamendi, in his capacity as the Insurance Commissioner of the State of California*, E.D. Cal. Case No. Civ. S-00-613 WBS JFM.

IT IS SO ORDERED AND ADJUDGED.

Dated: January 10, 2007



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE